

FIRST REGULAR SESSION

SENATE BILL NO. 241

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAGER.

Read 1st time January 30, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0957S.03I

AN ACT

To repeal sections 386.020, 392.415, and 392.461, RSMo, and to enact in lieu thereof twelve new sections relating to broadband.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 386.020, 392.415, and 392.461, RSMo, are repealed
2 and twelve new sections enacted in lieu thereof, to be known as sections 67.5060,
3 67.5062, 67.5064, 67.5066, 67.5068, 67.5070, 67.5072, 67.5074, 386.020, 392.415,
4 392.461, and 392.610, to read as follows:

67.5060. Sections **67.5060 to 67.5074** shall be known and may be
2 cited as the "Uniform Wireless Communications Infrastructure
3 Deployment Act" and is intended to encourage and streamline the
4 deployment of broadband facilities and to help ensure that robust
5 wireless communication services are available throughout Missouri.

67.5062. As used in sections **67.5060 to 67.5074**, the following
2 terms shall mean:

3 (1) "Accessory equipment", any equipment serving or being used
4 in conjunction with a wireless facility or wireless support
5 structure. The term includes utility or transmission equipment, power
6 supplies, generators, batteries, cables, equipment buildings, cabinets
7 and storage sheds, shelters, or similar structures;

8 (2) "Antenna", communications equipment that transmits and
9 receives electromagnetic radio signals used in the provision of all types
10 of wireless communications services;

11 (3) "Applicant", any person engaged in the business of providing
12 wireless communications services or the wireless communications

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 infrastructure required for wireless communications services who
14 submits an application;

15 (4) "Application", a request submitted by an applicant to an
16 authority to construct a new wireless support structure, for the
17 substantial modification of a wireless support structure, or for
18 collocation of wireless facilities on an existing structure;

19 (5) "Authority", each state, county, and municipal governing
20 body, board, agency, office, or commission authorized by law to make
21 legislative, quasi-judicial, or administrative decisions relative to the
22 construction, installation, modification, or siting of wireless facilities
23 and wireless support structures. The term shall not include state
24 courts having jurisdiction over land use, planning, or zoning decisions
25 made by an authority;

26 (6) "Base station", a station at a specific site authorized to
27 communicate with mobile stations, generally consisting of radio
28 transceivers, antennas, coaxial cables, power supplies, and other
29 associated electronics;

30 (7) "Building permit", a permit issued by an authority prior to the
31 collocation of wireless facilities on an existing structure, the
32 substantial modification of a wireless support structure or the
33 commencement of construction of any new wireless support structure,
34 solely to ensure that the work to be performed by the applicant
35 satisfies the applicable building code;

36 (8) "Collocation", the placement or installation of wireless
37 facilities on existing structures, including electrical transmission
38 towers, water towers, buildings, and other structures capable of
39 structurally supporting the attachment of wireless facilities in
40 compliance with applicable codes. The term includes the placement,
41 replacement, or modification of wireless facilities within a previously
42 approved equipment compound;

43 (9) "Electrical transmission tower", an electrical transmission
44 structure used to support high voltage overhead power lines. The term
45 shall not include any utility pole;

46 (10) "Equipment compound", an area surrounding or near the
47 base of a wireless support structure within which is located wireless
48 facilities;

49 (11) "Existing structure", a structure that exists at the time a

50 request for permission to place wireless facilities on a structure is filed
51 with an authority. The term includes any structure that is capable of
52 supporting the attachment of wireless facilities in compliance with
53 applicable codes, including, but not limited to, towers, buildings, and
54 water towers. The term shall not include any utility pole;

55 (12) "Substantial modification", the mounting of a proposed
56 wireless facility on a wireless support structure which:

57 (a) Increases the existing vertical height of the structure by
58 more than ten percent or the height of one additional antenna array
59 with separation from the nearest existing antenna not to exceed twenty
60 feet, whichever is greater; or

61 (b) Involves adding an appurtenance to the body of a wireless
62 support structure that protrudes horizontally from the edge of the
63 wireless support structure more than twenty feet, or more than the
64 width of the wireless support structure at the level of the
65 appurtenance, whichever is greater (except where necessary to shelter
66 the antenna from inclement weather or to connect the antenna to the
67 tower via cable); or

68 (c) Increases the square footage of the existing equipment
69 compound by more than two thousand five hundred square feet;

70 (13) "Utility pole", a structure owned or operated by a public
71 utility, municipality, electric membership corporation, or rural electric
72 cooperative that is designed specifically for and used to carry lines,
73 cables, or wires for telephony, cable television, or electricity or to
74 provide lighting;

75 (14) "Water tower", a water storage tank, or a standpipe or an
76 elevated tank situated on a support structure, originally constructed
77 for use as a reservoir or facility to store or deliver water;

78 (15) "Wireless facility", the set of equipment and network
79 components, exclusive of the underlying wireless support structure,
80 including, but not limited to, antennas, accessory equipment,
81 transmitters, receivers, base stations, power supplies, cabling, and
82 associated equipment necessary to provide wireless communications
83 services;

84 (16) "Wireless support structure", a freestanding structure, such
85 as a monopole or tower, designed to support wireless facilities. This
86 term does not include utility poles.

67.5064. In order to ensure uniformity across the state of
2 Missouri with respect to the consideration of every application, an
3 authority shall not:

4 (1) Require an applicant to submit information about, or
5 evaluate an applicant's business decisions with respect to, its designed
6 service, customer demand for service, or quality of its service to or
7 from a particular area or site;

8 (2) Evaluate an application based on the availability of other
9 potential locations for the placement of wireless support structures or
10 wireless facilities, including without limitation the option to collocate
11 instead of constructing a new wireless support structure or for
12 substantial modifications of a support structure, or vice versa;

13 (3) Dictate the type of wireless facilities, infrastructure, or
14 technology to be used by the applicant or require an applicant to
15 construct a distributed antenna system in lieu of constructing a new
16 wireless support structure, a substantial modification of a wireless
17 support structure, or collocation;

18 (4) Require the removal of existing wireless support structures
19 or wireless facilities, wherever located, as a condition to approval of an
20 application;

21 (5) Impose environmental testing, sampling, or monitoring
22 requirements or other compliance measures for radio frequency
23 emissions on wireless facilities that are categorically excluded under
24 the Federal Communication Commission's rules for radio frequency
25 emissions pursuant to 47 CFR 1.1307(b)(1);

26 (6) Establish or enforce regulations or procedures for RF signal
27 strength or the adequacy of service quality;

28 (7) In conformance with 47 U.S.C. Section 332(c)(7)(B)(iv), reject
29 an application, in whole or in part, based on perceived or alleged
30 environmental effects of radio frequency emissions;

31 (8) Impose any restrictions with respect to objects in navigable
32 airspace that are greater than or in conflict with the restrictions
33 imposed by the Federal Aviation Administration;

34 (9) Prohibit the placement of emergency power systems that
35 comply with federal and state environmental requirements;

36 (10) Charge an application fee, consulting fee, or other fee
37 associated with the submission, review, processing, and approval of an

38 application that is not required for similar types of commercial
39 development within the authority's jurisdiction. Fees imposed by an
40 authority or by a third-party entity providing review or technical
41 consultation to the authority must be based on actual, direct, and
42 reasonable administrative costs incurred for the review, processing,
43 and approval of an application. In no case should total charges and
44 fees exceed five hundred dollars for a collocation application or one
45 thousand five hundred dollars for an application for a new wireless
46 support structure or for a substantial modification of a wireless
47 support structure. Notwithstanding the foregoing:

48 (a) In no event shall an authority or any third-party entity
49 include within its charges any travel expenses incurred in a third-
50 party's review of an application; and

51 (b) In no event will an applicant be required to pay or reimburse
52 an authority for consultant or other third-party fees based on a
53 contingency or result-based arrangement;

54 (11) Impose surety requirements, including bonds, escrow
55 deposits, letters of credit, or any other type of financial surety, to
56 ensure that abandoned or unused facilities can be removed unless the
57 authority imposes similar requirements on other permits for other
58 types of commercial development or land uses. If surety requirements
59 are imposed, they must be competitively neutral, nondiscriminatory,
60 reasonable in amount, and commensurate with the historical record for
61 local facilities and structures that are abandoned;

62 (12) Condition the approval of an application on the applicant's
63 agreement to provide space on or near the wireless support structure
64 for authority or local governmental services at less than the market
65 rate for space or to provide other services via the structure or facilities
66 at less than the market rate for such services;

67 (13) Limit the duration of the approval of an application;

68 (14) Discriminate on the basis of the ownership, including by the
69 authority, of any property, structure, or tower when promulgating rules
70 or procedures for siting wireless facilities or for evaluating
71 applications;

72 (15) Impose any requirements or obligations regarding the
73 presentation or appearance of facilities, including but not limited to
74 those relating to the kind or type of materials used and those relating

75 to arranging, screening, or landscaping of facilities;

76 (16) Impose any requirements that an applicant purchase,
77 subscribe to, use, or employ facilities, network, or services owned,
78 provided, or operated by, whether in whole or in part, an authority or
79 by any entity in which an authority has a governance, competitive,
80 economic, financial, or other interest;

81 (17) Condition the approval of an application on, or otherwise
82 require, the applicant's agreement to indemnify or insure the authority
83 for or in connection with the authority's exercise of its police power-
84 based regulations; or

85 (18) Condition the approval of an application on, or otherwise
86 require, the applicant's agreement to permit the authority to place at
87 or co-locate with the applicant's wireless support structure any
88 wireless facilities provided or operated by, whether in whole or in part,
89 an authority or by any entity in which an authority has a governance,
90 competitive, economic, financial, or other interest.

67.5066. 1. Authorities may continue to exercise zoning, land use,
2 planning, and permitting authority within their territorial boundaries
3 with regard to the siting of new wireless support structures, subject to
4 the provisions of sections 67.5060 to 67.5074, including without
5 limitation section 67.5064, and subject to federal law.

6 2. Any applicant that proposes to construct a new wireless
7 support structure within the jurisdiction of any authority, planning or
8 otherwise, that has adopted planning and zoning regulations in
9 accordance with sections 67.5060 to 67.5074 shall:

10 (1) Submit the necessary copies and attachments of the
11 application to the appropriate authority; and

12 (2) Comply with applicable local ordinances concerning land use
13 and the appropriate permitting processes.

14 3. Disclosure of records in the possession or custody of authority
15 personnel, including but not limited to documents and electronic data,
16 shall be subject to chapter 610.

17 4. The authority, within one hundred fifty calendar days of
18 receiving an application to construct a new wireless support structure,
19 shall:

20 (1) Review the application in light of its conformity with
21 applicable local zoning regulations. An application is deemed to be

22 complete unless the authority notifies the applicant in writing, within
23 thirty calendar days of submission of the application, of the specific
24 deficiencies in the application which, if cured, would make the
25 application complete. Upon receipt of a timely written notice that an
26 application is deficient, an applicant may take thirty calendar days
27 from receiving such notice to cure the specific deficiencies. If the
28 applicant cures the deficiencies within thirty calendar days, the
29 application shall be reviewed and processed within one hundred fifty
30 calendar days from the initial date the application was received. If the
31 applicant requires a period of time beyond thirty calendar days to cure
32 the specific deficiencies, the one hundred fifty calendar days deadline
33 for review shall be extended by the same period of time;

34 (2) Make its final decision to approve or disapprove the
35 application; and

36 (3) Advise the applicant in writing of its final decision.

37 5. If the authority fails to act on an application to construct a
38 new wireless support structure within the one hundred fifty calendar
39 days review period specified under subsection 4 of this section, the
40 application shall be deemed approved.

41 6. A party aggrieved by the final action of an authority, either by
42 its affirmatively denying an application under the provisions of this
43 section or by its inaction, may bring an action for review in any court
44 of competent jurisdiction. In any such action, the party filing such
45 action, if it should substantially prevail in the action, shall be
46 permitted to recover its reasonable costs and attorney's fees in
47 bringing the action.

67.5068. 1. Authorities may continue to exercise zoning, land use,
2 planning, and permitting authority within their territorial boundaries
3 with regard to applications for substantial modifications of wireless
4 support structures, subject to the provisions of sections 67.5060 to
5 67.5074, including without limitation section 67.5064, and subject to
6 federal law.

7 2. Any applicant that applies for a substantial modification of a
8 wireless support structure within the jurisdiction of any authority,
9 planning, or otherwise, that has adopted planning and zoning
10 regulations in accordance with sections 67.5060 to 67.5074 shall:

11 (1) Submit the necessary copies and attachments of the

12 application to the appropriate authority; and

13 (2) Comply with applicable local ordinances concerning land use
14 and the appropriate permitting processes.

15 3. Disclosure of records in the possession or custody of authority
16 personnel, including but not limited to documents and electronic data,
17 shall be subject to chapter 610.

18 4. The authority, within ninety calendar days of receiving an
19 application for a substantial modification of wireless support
20 structures, shall:

21 (1) Review the application in light of its conformity with
22 applicable local zoning regulations. An application is deemed to be
23 complete unless the authority notifies the applicant in writing, within
24 thirty calendar days of submission of the application, of the specific
25 deficiencies in the application which, if cured, would make the
26 application complete. Upon receipt of a timely written notice that an
27 application is deficient, an applicant may take thirty calendar days
28 from receiving such notice to cure the specific deficiencies. If the
29 applicant cures the deficiencies within thirty calendar days, the
30 application shall be reviewed and processed within ninety calendar
31 days from the initial date the application was received. If the applicant
32 requires a period of time beyond thirty calendar days to cure the
33 specific deficiencies, the ninety calendar days deadline for review shall
34 be extended by the same period of time;

35 (2) Make its final decision to approve or disapprove the
36 application; and

37 (3) Advise the applicant in writing of its final decision.

38 5. If the authority fails to act on an application for a substantial
39 modification within the ninety calendar days review period specified
40 under subsection 4 of this section, the application for a substantial
41 modification shall be deemed approved.

42 6. A party aggrieved by the final action of an authority, either by
43 its affirmatively denying an application under the provisions of this
44 section or by its inaction, may bring an action for review in any court
45 of competent jurisdiction. In any such action, the party filing such
46 action, if it should substantially prevail in the action, shall be
47 permitted to recover its reasonable costs and attorney's fees in
48 bringing the action.

67.5070. 1. Subject to the provisions of sections 67.5060 to
2 67.5074, including without limitation section 67.5064, collocation
3 applications shall be reviewed for conformance with applicable
4 building permit requirements but shall not otherwise be subject to
5 zoning or land use requirements, including design or placement
6 requirements, or public hearing review.

7 2. The authority, within forty-five calendar days of receiving a
8 collocation application, shall:

9 (1) Review the collocation application in light of its conformity
10 with applicable building permit requirements and consistency with
11 sections 67.5060 to 67.5074. A collocation application is deemed to be
12 complete unless the authority notifies the applicant in writing, within
13 fifteen calendar days of submission of the collocation application, of
14 the specific deficiencies in the collocation application which, if cured,
15 would make the collocation application complete. Upon receipt of a
16 timely written notice that a collocation application is deficient, an
17 applicant may take fifteen calendar days from receiving such notice to
18 cure the specific deficiencies. If the applicant cures the deficiencies
19 within fifteen calendar days, the collocation application shall be
20 reviewed and processed within forty-five calendar days from the initial
21 date the collocation application was received. If the applicant requires
22 a period of time beyond fifteen calendar days to cure the specific
23 deficiencies, the forty-five calendar days deadline for review shall be
24 extended by the same period of time;

25 (2) Make its final decision to approve or disapprove the
26 collocation application; and

27 (3) Advise the applicant in writing of its final decision.

28 3. If the authority fails to act on a collocation application within
29 the forty five calendar days review period specified in subsection 2 of
30 this section, the collocation application shall be deemed approved.

31 4. Notwithstanding anything to the contrary in sections 67.5060
32 to 67.5074, an authority may not mandate, require, or regulate the
33 installation, location, or use of wireless facilities on utility poles.

34 5. A party aggrieved by the final action of an authority, either by
35 its affirmatively denying an application under the provisions of this
36 section or by its inaction, may bring an action for review in any court
37 of competent jurisdiction. In any such action, the party filing such

38 action, if it should substantially prevail in the action, shall be
39 permitted to recover its reasonable costs and attorneys fees in bringing
40 the action.

67.5072. In accordance with the policies of this state to further
2 the deployment of wireless communications infrastructure:

3 (1) An authority may not institute any moratorium on the
4 permitting, construction, or issuance of approval of new wireless
5 support structures, substantial modifications of wireless support
6 structures or collocations;

7 (2) To encourage applicants to request construction of new
8 wireless support structures on public lands and to increase local
9 revenues, authorities shall offer leases and/or contracts for applicants
10 to use public lands that are at least twenty-five years in duration, and
11 at market rates. If the applicant and the authority do not agree on the
12 applicable market rate for any such public land, and, further, cannot
13 agree on a process by which to derive the applicable market rate for
14 any such public land, then, in that circumstance, the market rate will
15 be determined by a panel of three appraisers, using the following
16 process. Each party will appoint one appraiser to the panel, and the
17 two appraisers so appointed will appoint a third appraiser. Each
18 appraiser will independently appraise the appropriate lease rate, and
19 the market rate shall be set at the mid-point between the highest and
20 lowest market rates among all three independent appraisals; provided,
21 however, that if the mid-point between the highest and lowest
22 appraisals is greater than or less than ten percent of the appraisal of
23 the third appraiser chosen by the parties' appointed appraisers, then
24 the third appraisal will determine the rate for the lease. The appraisal
25 process shall be concluded within one hundred fifty calendar days from
26 the date the applicant first tenders its proposed lease rate to the
27 authority. Each party will bear the cost of its own appointed appraiser,
28 and the parties shall share equally the cost of the third appraiser
29 chosen by the two appointed appraisers.

67.5074. If any provision of sections 67.5060 to 67.5074, or the
2 application thereof, to any person or circumstance is held invalid, such
3 invalidity shall not affect other provisions or applications of sections
4 67.5060 to 67.5074 which can be given effect without the invalid
5 provision or application, and to that end, the provisions of sections

6 67.5060 to 67.5074 are declared to be severable.

386.020. As used in this chapter, the following words and phrases mean:

2 (1) "Alternative local exchange telecommunications company", a local
3 exchange telecommunications company certified by the commission to provide
4 basic or nonbasic local telecommunications service or switched exchange access
5 service, or any combination of such services, in a specific geographic area
6 subsequent to December 31, 1995;

7 (2) "Alternative operator services company", any certificated
8 interexchange telecommunications company which receives more than forty
9 percent of its annual Missouri intrastate telecommunications service revenues
10 from the provision of operator services pursuant to operator services contracts
11 with traffic aggregators;

12 (3) "Basic interexchange telecommunications service" includes, at a
13 minimum, two-way switched voice service between points in different local calling
14 scopes as determined by the commission and shall include other services as
15 determined by the commission by rule upon periodic review and update;

16 (4) "Basic local telecommunications service", two-way switched voice
17 service within a local calling scope as determined by the commission comprised
18 of any of the following services and their recurring and nonrecurring charges:

19 (a) Multiparty, single line, including installation, touchtone dialing, and
20 any applicable mileage or zone charges;

21 (b) Assistance programs for installation of, or access to, basic local
22 telecommunications services for qualifying economically disadvantaged or
23 disabled customers or both, including, but not limited to, lifeline services and
24 link-up Missouri services for low-income customers or dual-party relay service for
25 the hearing impaired and speech impaired;

26 (c) Access to local emergency services including, but not limited to, 911
27 service established by local authorities;

28 (d) Access to basic local operator services;

29 (e) Access to basic local directory assistance;

30 (f) Standard intercept service;

31 (g) Equal access to interexchange carriers consistent with rules and
32 regulations of the Federal Communications Commission;

33 (h) One standard white pages directory listing. Basic local
34 telecommunications service does not include optional toll-free calling outside a
35 local calling scope but within a community of interest, available for an additional

36 monthly fee or the offering or provision of basic local telecommunications service
37 at private shared-tenant service locations;

38 (5) "Cable television service", the one-way transmission to subscribers of
39 video programming or other programming service and the subscriber interaction,
40 if any, which is required for the selection of such video programming or other
41 programming service;

42 (6) "Carrier of last resort", any telecommunications company which is
43 obligated to offer basic local telecommunications service to all customers who
44 request service in a geographic area defined by the commission and cannot
45 abandon this obligation without approval from the commission;

46 (7) "Commission", the "Public Service Commission" hereby created;

47 (8) "Commissioner", one of the members of the commission;

48 (9) "Competitive telecommunications company", a telecommunications
49 company which has been classified as such by the commission pursuant to section
50 392.245 or 392.361;

51 (10) "Competitive telecommunications service", a telecommunications
52 service which has been classified as such by the commission pursuant to section
53 392.245 or to section 392.361, or which has become a competitive
54 telecommunications service pursuant to section 392.370;

55 (11) "Corporation" includes a corporation, company, association and joint
56 stock association or company;

57 (12) "Customer-owned pay telephone", a privately owned
58 telecommunications device that is not owned, leased or otherwise controlled by
59 a local exchange telecommunications company and which provides
60 telecommunications services for a use fee to the general public;

61 (13) "Effective competition" shall be determined by the commission based
62 on:

63 (a) The extent to which services are available from alternative providers
64 in the relevant market;

65 (b) The extent to which the services of alternative providers are
66 functionally equivalent or substitutable at comparable rates, terms and
67 conditions;

68 (c) The extent to which the purposes and policies of chapter 392, including
69 the reasonableness of rates, as set out in section 392.185, are being advanced;

70 (d) Existing economic or regulatory barriers to entry; and

71 (e) Any other factors deemed relevant by the commission and necessary

72 to implement the purposes and policies of chapter 392;

73 (14) "Electric plant" includes all real estate, fixtures and personal
74 property operated, controlled, owned, used or to be used for or in connection with
75 or to facilitate the generation, transmission, distribution, sale or furnishing of
76 electricity for light, heat or power; and any conduits, ducts or other devices,
77 materials, apparatus or property for containing, holding or carrying conductors
78 used or to be used for the transmission of electricity for light, heat or power;

79 (15) "Electrical corporation" includes every corporation, company,
80 association, joint stock company or association, partnership and person, their
81 lessees, trustees or receivers appointed by any court whatsoever, other than a
82 railroad, light rail or street railroad corporation generating electricity solely for
83 railroad, light rail or street railroad purposes or for the use of its tenants and not
84 for sale to others, owning, operating, controlling or managing any electric plant
85 except where electricity is generated or distributed by the producer solely on or
86 through private property for railroad, light rail or street railroad purposes or for
87 its own use or the use of its tenants and not for sale to others;

88 (16) "Exchange", a geographical area for the administration of
89 telecommunications services, established and described by the tariff of a
90 telecommunications company providing basic local telecommunications service;

91 (17) "Exchange access service", a service provided by a local exchange
92 telecommunications company which enables a telecommunications company or
93 other customer to enter and exit the local exchange telecommunications network
94 in order to originate or terminate interexchange telecommunications service;

95 (18) "Gas corporation" includes every corporation, company, association,
96 joint stock company or association, partnership and person, their lessees, trustees
97 or receivers appointed by any court whatsoever, owning, operating, controlling or
98 managing any gas plant operating for public use under privilege, license or
99 franchise now or hereafter granted by the state or any political subdivision,
100 county or municipality thereof;

101 (19) "Gas plant" includes all real estate, fixtures and personal property
102 owned, operated, controlled, used or to be used for or in connection with or to
103 facilitate the manufacture, distribution, sale or furnishing of gas, natural or
104 manufactured, for light, heat or power;

105 (20) "Heating company" includes every corporation, company, association,
106 joint stock company or association, partnership and person, their lessees, trustees
107 or receivers, appointed by any court whatsoever, owning, operating, managing or

108 controlling any plant or property for manufacturing and distributing and selling,
109 for distribution, or distributing hot or cold water, steam or currents of hot or cold
110 air for motive power, heating, cooking, or for any public use or service, in any
111 city, town or village in this state; provided, that no agency or authority created
112 by or operated pursuant to an interstate compact established pursuant to section
113 70.370 shall be a heating company or subject to regulation by the commission;

114 (21) "High-cost area", a geographic area, which shall follow exchange
115 boundaries and be no smaller than an exchange nor larger than a local calling
116 scope, where the cost of providing basic local telecommunications service as
117 determined by the commission, giving due regard to recovery of an appropriate
118 share of joint and common costs as well as those costs related to carrier of last
119 resort obligations, exceeds the rate for basic local telecommunications service
120 found reasonable by the commission;

121 (22) "Incumbent local exchange telecommunications company", a local
122 exchange telecommunications company authorized to provide basic local
123 telecommunications service in a specific geographic area as of December 31, 1995,
124 or a successor in interest to such a company;

125 (23) "Interconnected voice over internet protocol service", service that:

126 (a) Enables real-time, two-way voice communications;

127 (b) Requires a broadband connection from the user's location;

128 (c) Requires internet protocol-compatible customer premises equipment;

129 and

130 (d) Permits users generally to receive calls that originate on the public
131 switched telephone network and to terminate calls to the public switched
132 telephone network;

133 (24) "Interexchange telecommunications company", any company engaged
134 in the provision of interexchange telecommunications service;

135 (25) "Interexchange telecommunications service", telecommunications
136 service between points in two or more exchanges;

137 (26) "InterLATA", interexchange telecommunications service between
138 points in different local access and transportation areas;

139 (27) "IntraLATA", interexchange telecommunications service between
140 points within the same local access and transportation area;

141 (28) "Light rail" includes every rail transportation system in which one
142 or more rail vehicles are propelled electrically by overhead catenary wire upon
143 tracks located substantially within an urban area and are operated exclusively

144 in the transportation of passengers and their baggage, and including all bridges,
145 tunnels, equipment, switches, spurs, tracks, stations, used in connection with the
146 operation of light rail;

147 (29) "Line" includes route;

148 (30) "Local access and transportation area" or "LATA", contiguous
149 geographic area approved by the U.S. District Court for the District of Columbia
150 in *United States v. Western Electric*, Civil Action No. 82-0192 that defines the
151 permissible areas of operations for the Bell Operating companies;

152 (31) "Local exchange telecommunications company", any company engaged
153 in the provision of local exchange telecommunications service. A local exchange
154 telecommunications company shall be considered a "large local exchange
155 telecommunications company" if it has at least one hundred thousand access lines
156 in Missouri and a "small local exchange telecommunications company" if it has
157 less than one hundred thousand access lines in Missouri;

158 (32) "Local exchange telecommunications service", telecommunications
159 service between points within an exchange;

160 (33) "Long-run incremental cost", the change in total costs of the company
161 of producing an increment of output in the long run when the company uses least
162 cost technology, and excluding any costs that, in the long run, are not brought
163 into existence as a direct result of the increment of output. The relevant
164 increment of output shall be the level of output necessary to satisfy total current
165 demand levels for the service in question, or, for new services, demand levels that
166 can be demonstrably anticipated;

167 (34) "Municipality" includes a city, village or town;

168 (35) "Nonbasic telecommunications services" shall be all regulated
169 telecommunications services other than basic local and exchange access
170 telecommunications services, and shall include the services identified in
171 paragraphs (d) and (e) of subdivision (4) of this section. Any retail
172 telecommunications service offered for the first time after August 28, 1996, shall
173 be classified as a nonbasic telecommunications service, including any new service
174 which does not replace an existing service;

175 (36) "Noncompetitive telecommunications company", a telecommunications
176 company other than a competitive telecommunications company or a
177 transitionally competitive telecommunications company;

178 (37) "Noncompetitive telecommunications service", a telecommunications
179 service other than a competitive or transitionally competitive telecommunications

180 service;

181 (38) "Operator services", operator-assisted interexchange telecommunications
182 service by means of either human or automated call intervention and includes,
183 but is not limited to, billing or completion of calling card, collect,
184 person-to-person, station-to-station or third number billed calls;

185 (39) "Operator services contract", any agreement between a traffic
186 aggregator and a certificated interexchange telecommunications company to
187 provide operator services at a traffic aggregator location;

188 (40) "Person" includes an individual, and a firm or copartnership;

189 (41) "Private shared tenant services" includes the provision of
190 telecommunications and information management services and equipment within
191 a user group located in discrete private premises as authorized by the commission
192 by a commercial-shared services provider or by a user association, through
193 privately owned customer premises equipment and associated data processing and
194 information management services and includes the provision of connections to the
195 facilities of local exchange telecommunications companies and to interexchange
196 telecommunications companies;

197 (42) "Private telecommunications system", a telecommunications system
198 controlled by a person or corporation for the sole and exclusive use of such
199 person, corporation or legal or corporate affiliate thereof;

200 (43) "Public utility" includes every pipeline corporation, gas corporation,
201 electrical corporation, telecommunications company, water corporation, heat or
202 refrigerating corporation, and sewer corporation, as these terms are defined in
203 this section, and each thereof is hereby declared to be a public utility and to be
204 subject to the jurisdiction, control and regulation of the commission and to the
205 provisions of this chapter;

206 (44) "Railroad" includes every railroad and railway, other than street
207 railroad or light rail, by whatsoever power operated for public use in the
208 conveyance of persons or property for compensation, with all bridges, ferries,
209 tunnels, equipment, switches, spurs, tracks, stations, real estate and terminal
210 facilities of every kind used, operated, controlled or owned by or in connection
211 with any such railroad;

212 (45) "Railroad corporation" includes every corporation, company,
213 association, joint stock company or association, partnership and person, their
214 lessees, trustees or receivers appointed by any court whatsoever, owning, holding,
215 operating, controlling or managing any railroad or railway as defined in this

216 section, or any cars or other equipment used thereon or in connection therewith;
217 (46) "Rate", every individual or joint rate, fare, toll, charge, reconsigning
218 charge, switching charge, rental or other compensation of any corporation, person
219 or public utility, or any two or more such individual or joint rates, fares, tolls,
220 charges, reconsigning charges, switching charges, rentals or other compensations
221 of any corporation, person or public utility or any schedule or tariff thereof;
222 (47) "Resale of telecommunications service", the offering or providing of
223 telecommunications service primarily through the use of services or facilities
224 owned or provided by a separate telecommunications company, but does not
225 include the offering or providing of private shared tenant services;
226 (48) "Service" includes not only the use and accommodations afforded
227 consumers or patrons, but also any product or commodity furnished by any
228 corporation, person or public utility and the plant, equipment, apparatus,
229 appliances, property and facilities employed by any corporation, person or public
230 utility in performing any service or in furnishing any product or commodity and
231 devoted to the public purposes of such corporation, person or public utility, and
232 to the use and accommodation of consumers or patrons;
233 (49) "Sewer corporation" includes every corporation, company, association,
234 joint stock company or association, partnership or person, their lessees, trustees
235 or receivers appointed by any court, owning, operating, controlling or managing
236 any sewer system, plant or property, for the collection, carriage, treatment, or
237 disposal of sewage anywhere within the state for gain, except that the term shall
238 not include sewer systems with fewer than twenty-five outlets;
239 (50) "Sewer system" includes all pipes, pumps, canals, lagoons, plants,
240 structures and appliances, and all other real estate, fixtures and personal
241 property, owned, operated, controlled or managed in connection with or to
242 facilitate the collection, carriage, treatment and disposal of sewage for municipal,
243 domestic or other beneficial or necessary purpose;
244 (51) "Street railroad" includes every railroad by whatsoever type of power
245 operated, and all extensions and branches thereof and supplementary facilities
246 thereto by whatsoever type of vehicle operated, for public use in the conveyance
247 of persons or property for compensation, mainly providing local transportation
248 service upon the streets, highways and public places in a municipality, or in and
249 adjacent to a municipality, and including all cars, buses and other rolling stock,
250 equipment, switches, spurs, tracks, poles, wires, conduits, cables, subways,
251 tunnels, stations, terminals and real estate of every kind used, operated or owned

252 in connection therewith but this term shall not include light rail as defined in
253 this section; and the term "street railroad" when used in this chapter shall also
254 include all motor bus and trolley bus lines and routes and similar local
255 transportation facilities, and the rolling stock and other equipment thereof and
256 the appurtenances thereto, when operated as a part of a street railroad or trolley
257 bus local transportation system, or in conjunction therewith or supplementary
258 thereto, but such term shall not include a railroad constituting or used as part
259 of a trunk line railroad system and any street railroad as defined above which
260 shall be converted wholly to motor bus operation shall nevertheless continue to
261 be included within the term street railroad as used herein;

262 (52) "Telecommunications company" includes telephone corporations as
263 that term is used in the statutes of this state and every corporation, company,
264 association, joint stock company or association, partnership and person, their
265 lessees, trustees or receivers appointed by any court whatsoever, owning,
266 operating, controlling or managing any facilities used to provide
267 telecommunications service for hire, sale or resale within this state;

268 (53) "Telecommunications facilities" includes lines, conduits, ducts, poles,
269 wires, cables, crossarms, receivers, transmitters, instruments, machines,
270 appliances and all devices, real estate, easements, apparatus, property and routes
271 used, operated, controlled or owned by any telecommunications company to
272 facilitate the provision of telecommunications service;

273 (54) "Telecommunications service", the transmission of information by
274 wire, radio, optical cable, electronic impulses, or other similar means. As used
275 in this definition, "information" means knowledge or intelligence represented by
276 any form of writing, signs, signals, pictures, sounds, or any other
277 symbols. Telecommunications service does not include:

278 (a) The rent, sale, lease, or exchange for other value received of customer
279 premises equipment except for customer premises equipment owned by a
280 telephone company certificated or otherwise authorized to provide telephone
281 service prior to September 28, 1987, and provided under tariff or in inventory on
282 January 1, 1983, which must be detariffed no later than December 31, 1987, and
283 thereafter the provision of which shall not be a telecommunications service, and
284 except for customer premises equipment owned or provided by a
285 telecommunications company and used for answering 911 or emergency calls;

286 (b) Answering services and paging services;

287 (c) The offering of radio communication services and facilities when such

288 services and facilities are provided under a license granted by the Federal
289 Communications Commission under the commercial mobile radio services rules
290 and regulations;

291 (d) Services provided by a hospital, hotel, motel, or other similar business
292 whose principal service is the provision of temporary lodging through the owning
293 or operating of message switching or billing equipment solely for the purpose of
294 providing at a charge telecommunications services to its temporary patients or
295 guests;

296 (e) Services provided by a private telecommunications system;

297 (f) Cable television service;

298 (g) The installation and maintenance of inside wire within a customer's
299 premises;

300 (h) Electronic publishing services;

301 (i) Services provided pursuant to a broadcast radio or television license
302 issued by the Federal Communications Commission; [or]

303 (j) Interconnected voice over internet protocol service; **or**

304 **(k) IP-enabled services defined as any service, capability,**
305 **functionality, or application using existing internet protocol, or any**
306 **successor internet protocol, that enables an end user to send or receive**
307 **a communication in existing internet protocol format, or any successor**
308 **internet protocol format, regardless of whether the communication is**
309 **voice, data, or video;**

310 (55) "Telephone cooperative", every corporation defined as a
311 telecommunications company in this section, in which at least ninety percent of
312 those persons and corporations subscribing to receive local telecommunications
313 service from the corporation own at least ninety percent of the corporation's
314 outstanding and issued capital stock and in which no subscriber owns more than
315 two shares of the corporation's outstanding and issued capital stock;

316 (56) "Traffic aggregator", any person, firm, partnership or corporation
317 which furnishes a telephone for use by the public and includes, but is not limited
318 to, telephones located in rooms, offices and similar locations in hotels, motels,
319 hospitals, colleges, universities, airports and public or customer-owned pay
320 telephone locations, whether or not coin operated;

321 (57) "Transitionally competitive telecommunications company", an
322 interexchange telecommunications company which provides any noncompetitive
323 or transitionally competitive telecommunications service, except for an

324 interexchange telecommunications company which provides only noncompetitive
325 telecommunications service;

326 (58) "Transitionally competitive telecommunications service", a
327 telecommunications service offered by a noncompetitive or transitionally
328 competitive telecommunications company and classified as transitionally
329 competitive by the commission pursuant to section 392.361 or 392.370;

330 (59) "Water corporation" includes every corporation, company, association,
331 joint stock company or association, partnership and person, their lessees,
332 trustees, or receivers appointed by any court whatsoever, owning, operating,
333 controlling or managing any plant or property, dam or water supply, canal, or
334 power station, distributing or selling for distribution, or selling or supplying for
335 gain any water;

336 (60) "Water system" includes all reservoirs, tunnels, shafts, dams, dikes,
337 headgates, pipes, flumes, canals, structures and appliances, and all other real
338 estate, fixtures and personal property, owned, operated, controlled or managed
339 in connection with or to facilitate the diversion, development, storage, supply,
340 distribution, sale, furnishing or carriage of water for municipal, domestic or other
341 beneficial use.

392.415. 1. Upon request, a telecommunications carrier or commercial
2 mobile service provider as identified in 47 U.S.C. Section 332(d)(1) and 47 CFR
3 Parts 22 or 24 shall provide call location information concerning the user of a
4 telecommunications service or a wireless communications service, in an
5 emergency situation, to a law enforcement official or agency in order to respond
6 to a call for emergency service by a subscriber, customer, or user of such service,
7 or to provide caller location information (or do a ping locate) in an emergency
8 situation that involves danger of death or serious physical injury to any person
9 where disclosure of communications relating to the emergency is required without
10 delay.

11 2. No cause of action shall lie in any court of law against any
12 telecommunications carrier or telecommunications service or commercial mobile
13 service provider, or against any telecommunications service or wireless
14 communications service, or its officers, employees, agents, or other specified
15 persons, for providing any information, facilities, or assistance to a law
16 enforcement official or agency in accordance with the terms of this section, **or for**
17 **providing such information, facilities, or assistance through any plan**
18 **or system required by sections 190.300 to 190.340.** Notwithstanding any

19 other provision of law, nothing in this section prohibits a telecommunications
20 carrier or commercial mobile service provider from establishing protocols by
21 which such carrier or provider could voluntarily disclose call location information.

392.461. A telecommunications company may, upon written notice to the
2 commission, elect to be exempt from certain retail rules relating to:

3 (1) The provision of telecommunications service to retail customers and
4 established by the commission which include provisions already mandated by the
5 Federal Communications Commission, including but not limited to federal rules
6 regarding customer proprietary network information, verification of orders for
7 changing telecommunications service providers (slamming), submission or
8 inclusion of charges on customer bills (cramming); or

9 (2) The installation, provisioning, or termination of retail service.

10 Notwithstanding any other provision of this section, a telecommunications
11 company shall not be exempt from any commission rule established under
12 authority delegated to the state commission pursuant to federal statute, rule or
13 order, including but not limited to universal service funds, number pooling and
14 conservation efforts, or any authority delegated to the state commission to
15 facilitate or enforce any interconnection obligation or other intercarrier issue,
16 including but not limited to, intercarrier compensation, network configuration or
17 other such matters. Notwithstanding other provisions of this chapter or chapter
18 386, a telecommunications company may, upon written notice to the commission,
19 elect to be exempt from any requirement to file or maintain with the commission
20 any tariff or schedule of rates, rentals, charges, privileges, facilities, rules,
21 regulations, or forms of contract, **whether in whole or in part**, for
22 telecommunications services [offered or provided to residential or business retail
23 end user customers], **except exchange access services**, and instead shall
24 publish generally available retail prices for those services available to the public
25 by posting such prices on a publicly accessible website. Nothing in this section
26 shall affect the rights and obligations of any entity, including the commission,
27 established pursuant to federal law, including 47 U.S.C. Sections 251 and 252,
28 any state law, rule, regulation, or order related to wholesale rights and
29 obligations, or any tariff or schedule that is filed with and maintained by the
30 commission.

**392.610. 1. A telecommunications company certificated under
2 this chapter or holding a state charter authorizing it to engage in the
3 telephone business shall not be subject to any statute in chapters 386**

4 or 392, nor any rule promulgated or order issued under those chapters,
5 that imposes duties, obligations, conditions, or regulations on retail
6 telecommunications services, except to the extent it elects to remain
7 subject to certain statutes, rules, or orders by notification to the
8 commission. Telecommunications companies shall remain subject to
9 general, non-telecommunications specific, statutory provisions, other
10 than those in chapters 386 and 392, to the extent
11 applicable. Telecommunications companies shall:

12 (1) Collect from their end users the Universal Service Fund
13 surcharge in the same competitively-neutral manner as other
14 telecommunications companies and Interconnected VoIP providers,
15 remit such collected surcharge to the Universal Service Fund
16 administrator, and receive, as appropriate, funds disbursed from the
17 universal service fund, which may be used to support the provision of
18 local voice service;

19 (2) Report to the commission such intrastate telecommunications
20 service revenues as are necessary to calculate the commission
21 assessment, Universal Service Fund surcharge, and telecommunications
22 programs under section 209.255; and

23 (3) Continue to comply with the provisions of section 392.415
24 pertaining to the provision of location information in emergency
25 situations.

26 2. Notwithstanding any other provision of this section, a
27 telecommunications company shall not be exempt from any commission
28 rule established under authority delegated to the state commission
29 pursuant to federal statute, rule, or order, including but not limited to
30 universal service funds, number pooling, and conservation efforts, or
31 any authority delegated to the state commission to facilitate or enforce
32 any interconnection obligation or other intercarrier issue, including
33 but not limited to, intercarrier compensation, network configuration,
34 or other such matters.

35 3. Beginning August 28, 2013, telecommunications companies
36 seeking to provide telecommunications service may, in lieu of the
37 process and requirements for certification set out in other sections,
38 elect to obtain certification by following the same registration process
39 set out in subsection 3 of section 392.550, substituting
40 "telecommunications service" for "interconnected voice over internet

41 **protocol service" in the requirements specified in subdivisions (1) to (8)**
42 **of subsection 3 of section 392.550.**

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Unofficial

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